

FILED
COURT OF APPEALS
DIVISION II

2023 JAN -9 PM 2:54

STATE OF WASHINGTON

BY KE
DEPUTY

**COURT OF APPEALS DIVISION TWO
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,
Respondent,

v.

JAMES GRANTHAM,
Appellant.

No. 56885-3-II

**STATEMENT OF ADDITIONAL GROUNDS
FOR REVIEW (RAP 10.10)**

I, James Grantham, have received and reviewed the opening brief prepared by my attorney in the above captioned Case No. Summarized below is the additional ground for review that is not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground

Whether an impermissible prior juvenile conviction was relied on, as criminal history in Grantham's offender score calculation process, to impose a high-end sentence of the standard range on his current conviction?

Summarized Argument

1. The sentencing court improperly factored in and considered a prior juvenile conviction when sentencing Grantham to the high-end of the standard range on his current crime.

In 1995, when Grantham was originally sentenced for his current crime, the sentencing court improperly included into the J&S a prior juvenile robbery conviction, committed when Grantham was 14-years-old. CP 32. This conviction was not allowed to be relied on in any fashion for criminal history purposes

nor for the purposes of calculating offender scores. In re LaChapelle, 153 Wn.2d 1, 4-5 (2004)(citing former RCW 9.94A.030(12)(b)(ii) (1996)). In LaChapelle, the Court found that "[p]rior to the SRA amendment, juvenile offenses committed before the age of 15 were not included as prior offense in the calculation of offender scores for current offenses." Id at 4. This is true regardless whether the change in the offender score would not alter the applicable standard range, because incorporating such convictions into the J&S signals that such offenses were relied upon in some manner that affected the standard range sentence, especially where the sentence imposed is at the high-end. The proper remedy is to remove such offenses from the current J&S and to resentence individuals without consideration of these types of offenses. Id at 13-14.

Here, at Grantham resentencing hearing held in April of 2022, in the Pierce County Superior Court, the sentencing judge acknowledged that Grantham's juvenile conviction of robbery was relied on when the original judge imposed the high-end of the standard range. "Your history, I'm sure, scared Judge Sebring to death. Robbery in the first degree." RP 22. This robbery conviction the sentencing judge is referencing is the juvenile conviction Grantham committed when he was 14-years-old. CP 32. The sentencing court further added: "it does not appear to me as though the ... unlawful possession of a controlled substance, conviction or the PSP, possession of stolen property, conviction or maybe even the bail jump conviction had much to do with Judge Sebring's decision when he sentenced you to the high end." RP 23. All which supports that the sentencing court improperly considered the juvenile robbery conviction when it sentenced Grantham to the high end of the sentencing range.

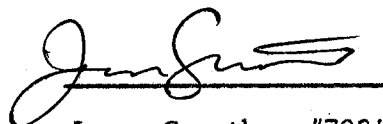
The laws in effect at the time Grantham was originally sentenced under

this matter did not allow sentencing courts to consider the robbery conviction much less rely on it to impose a higher sentence in the standard range. LaChapelle at 13-14. The sentencing court here affirms that the juvenile robbery conviction Grantham committed when he was 14-years-old was relied on for a higher end sentence. Further, this conviction could not be included in Grantham's J&S as criminal history. Id. Thus, not only must the robbery conviction be removed from Grantham's current J&S, but he must also be resentenced to a lower sentence where the robbery conviction is not relied upon.

Conclusion

Grantham respectfully asks this Court to grant his appeal for resentencing, and to remand back to the lower court for further proceedings.

DATED this 4th day of January, 2023.



James Grantham #703436
Appellant/H4-A-82U
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

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CERTIFICATE OF SERVICE

STATE OF WASHINGTON *VS*

The undersigned certifies under penalty of perjury under the laws of the State of Washington ~~that~~ ^{DEPUTY} on the below date, I sent a copy of STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW (RAP 10.10) to the following:


Tiffinie Ma (WSRA 51420)
Attorney for Appellant
Washington Appellate Project
1511 Third ave., Suite 610
Seattle, WA 98101

Kristie Barham, DPA
Pierce County Prosecutor's Office
930 Tacoma Ave. S.
Tacoma, WA 98402

The original document to which this certificate of service is affixed/attached was filed in the **Court of Appeals - Division Two** under **Case No. 56885-3-II**. These documents were sent First-Class Postage via the LEGAL MAIL process here at the Stafford Creek Corrections Center.

The foregoing is true and correct to the best of my knowledge and belief.

DATED this 4th day of January, 2023, in Aberdeen, WA 98520.


James Grantham #703436

Appellant